

No. PD-0823-21

**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS**

FILED
COURT OF CRIMINAL APPEALS
4/6/2022
DEANA WILLIAMSON, CLERK

THE STATE OF TEXAS
Appellant

v.

SANITHA LASHAY HATTER
Appellee

NO. 14-20-00496-CR
COURT OF APPEALS
FOR THE FOURTEENTH DISTRICT OF TEXAS

On Appeal from Cause Number 1667833
From the 230TH District Court of Harris County, Texas

APPELLEE'S BRIEF

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PRESIDING JUDGE:

Hon. Chris Morton
230th District Court
Houston, Texas 77002

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STATEMENT OF THE CASE

On May 21, 2019, the Appellee was indicted for assault of a public servant in cause number 1622433. (C.R. at 15). That case was dismissed on January 22, 2020. (C.R. at 53). The State refiled the same case under cause number 1667833 and it was indicted on March 11, 2020. (C.R. at 6). Cause number 1667833 is the subject of this appeal.

Appellee filed a motion for specific performance requesting this case be dismissed pursuant to the original promise. (C.R. at 59-60). On June 15, 2020, following a hearing on the motion, the Trial Court granted Appellee's motion and ordered the case to be dismissed. (C.R. at 61). The State timely filed notice of appeal. (C.R. at 78-79).

The 14th Court of Appeals affirmed the conviction on September 30, 2021, in a published opinion. *State v. Hatter*, 634 S.W.3d 456 (Tex. App.— Houston, [14th Dist.] 2021).

GROUND FOR REVIEW (RESTATE)

- 1. Whether there was an immunity agreement?**
- 2. Whether the trial court consented to it?**

State v. Hatter, 634 S.W.3d 456 (Tex. App.— Houston, [14th Dist.] 2021).

STATEMENT OF FACTS

On March 26, 2020, Appellee filed a motion for specific performance requesting that the trial court enforce the State's promise not to refile against her. (C.R. at 59-60). After an in person hearing on the motion, the trial court found the affidavit of trial counsel to be true and correct and the prosecutor's testimony to be honest. (1 R.R. at 29-30). The trial court stated on the record that there is a disagreement as to memory, but a promise was made to dismiss this case no matter what, a dismissal was filed and he therefore granted the Appellee's motion. (1 R.R. at 30). The trial court directed the State to file a dismissal in this cause. (*Id.*).

SUMMARY OF THE ARGUMENT

Article 32.03 was created to keep checks and balances between the trial court and district attorneys. Tex. Crim. Code of Criminal Procedure article 32.02. Appellee relied on a promise not to refile no matter what in this case. The State broke that promise. The court of appeals held that, following a hearing, the trial court found the promise was an immunity agreement and the trial court consented to the agreement upon ordered dismissal.

GROUND FOR REVIEW (RESTATE)

- 1. Whether there was an immunity agreement?**
- 2. Whether the trial court consented to it?**

Analysis

A careful analysis of Texas Code of Criminal Procedure article 32.02, the caselaw construing article 32.02, and the facts alleged in this case reveal that the prosecutor on appeal is questioning and/or raising doubts about the trial court's autonomy. At common law the prosecutor had exclusive control of all criminal proceedings and the sole authority to dismiss a case. *Smith v. State*, 70 S.W.3d 848, 854 (Tex. Crim. App. 2002)(en banc); *citing State v. Anderson*, 119 Tex. 110, 115-20, 26 S.W. 2d 174, 175-78 (1930). Article 32.02 was enacted to prevent abuse by district attorneys in dismissing criminal prosecutions and provides that the State may dismiss a criminal action at any time by filing a written statement setting out its reasons for the

dismissal. *Smith v. State*, 70 S.W.3d at 852-53; Tex. Code Crim. Pro. Ann. art. 32.02. It further provides that "no case shall be dismissed without the consent of the presiding judge." *Id.* The trial court has mandatory discretion whether or not to approve a dismissal dating back to common law concerns.

Appellant's brief argues that the court of appeals erred by retroactively converting the January dismissal into an immunity agreement because neither the trial court nor the Appellee claimed the trial court was aware the January dismissal was pursuant to an immunity agreement and that the trial court "retroactively" consented. (Appellant's brief p. 16). This Court held in *Smith* that the requirement that the prosecutor set out in writing the reasons for dismissal is not mandatory and that the trial court does not have to "know the reasons for dismissal with any particular degree." *Smith v. State*, 70 S.W.3d at 853. Further, Texas has never had a general statute that specifically regulated the granting of immunity from prosecution. A grant of immunity from prosecution is, conceptually, a prosecutorial promise to dismiss a case. *Smith*, 70 S.W.3d at 850-851; *citing Graham v. State*, 994 S.W.2d 651, 653-54 (Tex. Crim. App. 1999). The finding by the court of appeals that there was an immunity agreement in this case is proper.

The Appellant is asking this Court to create new law holding that a prosecutor's offer of immunity from future prosecution is binding only if the trial court approves the promise when it is made. This takes responsibility away from the State and places

it unduly on the trial court. The trial court in this case held a hearing on the matter and put its determinations into the record. As noted in the court of appeals opinion, the record does not warrant revisiting this determination. By granting Appellee's motion for specific performance, the trial court provided the approval necessary to render the grant of immunity enforceable. *State v. Hatter*, 634 S.W.3d at 461; *see* Tex. Code Crim. Proc. Ann. art. 32.02; *see also Smith*, 70 S.W.3d at 851; *Graham*, 994 S.W.2d at 654. The court of appeals finding that the trial court consented to the immunity agreement is accurate.

In granting Appellee's motion and ordering dismissal, the trial court was preventing abuse by prosecutors. Defense counsel must be able to rely on the State's promises. The court of appeals was justified in finding that the trial court consented to an immunity agreement because it is supported by the record.

PRAYER FOR RELIEF

Appellee respectfully prays that this Court issue an opinion affirming the judgment of the court of appeals.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion was eserved to the following on
April 4, 2022.

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